IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

**APPEAL FROM ORDER NO.823 OF 2004**

Indira Gandhi Mahila Sahakari
Soot Girani Limited ... Appellants

V/s.

1. Jess Smith & Sons Cotton
LLC & Ors. ... Respondents

Mr.A.A. Kumbhakoni i/b M/s.Desai & Diwanji for Appellants

Mr.J.V. Bhagwat h/f Y.V. Divekar for Respondent No.1

Mr.Vijay Patil for Respondent No.3

Mr.S.S. Shetye a/w Ms.Swati Deshpande i/b M/s.Bodhanwala & Co. for Bank of India

CORAM: **SMT.NISHITA MHATRE,**

DATED: **OCTOBER 15, 2004**

**P.C.:**

. This Appeal from Order challenges the order of 8.3.2002 of the Civil Judge, Senior Division refusing to grant any ad-interim injunction while issuing showcause notice to the Defendants (Respondents herein). The Plaintiffs (Appellants herein) are a cooperative society registered under the Maharashtra State Cooperative Societies Act, 1960 engaged in the business of manufacturing cotton yarn. The members of this society are under privileged women who are running the mill in the district of Kolhapur. Defendant No.1 is a major seller of cotton in United States of America. Defendant

No.2 was the agent of Defendant No.1 in India at the relevant time. Defendant No.3 are the bankers of the Plaintiffs who issued a letter of credit on behalf of the Plaintiffs.

2. A contract was entered into on 21.5.2001 whereby Defendant No.1 agreed to sell to the plaintiff 4250 bales of cotton in two separate consignments. The payment was agreed to be made by way of letter of credit. It appears that pursuant to this agreement, the plaintiffs received the first consignment which had 400 defective bales of cotton. It appears Defendant No.2 agreed to supply an additional quantity of 400 bales alongwith the second consignment. The value of the letter of credit was not to exceed US$536562.50. Apparently, in the second consignment 2040 bales of cotton were shipped as against the agreed quantity of 2525 bales. By its letter of 10.1.2002, the defendant explained the shortage of the number of bales by stating that it was due to a new, experimental, ultra high density bale press being used in order to maximise the cotton contained in each bale. It appears that the Plaintiffs then found that there was a loss of around about 100 tonnes which is equivalent to 244572 pounds in the weight of the cotton received. The plaintiffs, therefore, filed a suit for injunction against the defendants from encashing the letter of credit as

Defendant No.1 had failed to comply with the conditions of the contract. Apparently, the letter of credit had been opened by the plaintiffs' bankers Defendant No.3 on 21.11.2001 and the due date was 90 days from the bill of lading. The suit was filed on 7.3.2002 and injunction was sought in the following terms:

(a) The Defendant No.1, its agents, officers or servants may kindly be restrained by an order of temporary injunction from recovering, receiving and/or realising any amount under the letter of credit from the Defendant No.3, till the final disposal of the suit.

(b) The Defendant No.3 may kindly be restrained by an order of temporary injunction from making any payment of any sum of money to the Defendant No.1 or Defendant No.2 under the said letter of credit, till the final disposal of the suit.

(c) The Defendants No.1, its agents, officers or servants may kindly be restrained by an order of temporary injunction from recovering any amount from the Plaintiff in respect of the suit transaction in any way and in any manner till the final disposal of the suit.

(d) Ad-interim injunction in terms of prayer clause (a) to (c) may kindly be granted.

3. The trial Court refused to grant temporary injunction since no irreparable loss would be caused to plaintiffs, which could not be compensated in terms of money. Notice was, however, issued to the defendants.

4. Being aggrieved by this order, the plaintiffs rushed to this Court. By order dated 11.3.2002, this Court restrained Defendant Nos.1 and 2 from encashing the letter of credit to the extent of US$103943 and a further restrained defendant No.3 from paying over the proceeds of the letter of credit to the aforesaid extent. It appears that though the order was received by Defendant No.3 in time and communicated to their counterparts in United States of America, the the letter of credit was discounted on 7.1.2002 itself. Accordingly, therefore, the prayers sought by the plaintiffs in the exhibit 5 application have become infructuous. No purpose would be served by passing any orders at this juncture in favour of the plaintiffs. Assuming te plaintiffs have been defrauded as submitted by Mr.Kumbhakoni, appearing for them, the plaintiffs can always be compensated for the loss caused to them. I see no reason to interfere with the orders of the trial Court. Moreover, the bank had discounted the letter of credit on 7.1.2002, even prior to the filing of the suit.

5. Hence, Appeal from Order dismissed.

6. In view of the dismissal of the Appeal from Order, nothing survives in Civil Application No.334 of 2002 and the same is disposed of accordingly.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO.108 OF 2003**
IN
APPEAL FROM ORDER NO.823 OF 2004

| Office Notes, Office Memoranda of Coram, appearances, Court's Order or Directions and Registrar's Orders | Court's or Judge's Orders |
|---|---|

Mr.A.A. Kumbhakoni i/b M/s.Desai & Diwanji for Appellant

Mr.J.V. Bhagwat h/f Y.V. Divekar for Respondent No.1

Mr.Vijay Patil for Respondent No.3

Mr.S.S. Shetye a/w Ms.Swati Deshpande i/b M/s.Bodhanwala & Co. for Bank of India

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: OCTOBER 15, 2004**

. The prayers sought by this Civil Application are mainly for a declaration that Defendant No.1 has committed contempt of the order dated 11.3.2002 passed in the Appeal from Order. Certain other

reliefs have been sought for against the opponents, that is, the defendants herein, as well as the added opponent-Bank of India whose New York branch discounted the letter of credit.

2. These prayers essentially are for a direction to the Bank to make a reverse entry and a direction to Respondent No.1 to bring back the amount of US$103943.11. In my view, there is no need to grant these prayers at this juncture. In any event, a declaration that contempt has been committed by any of the respondents, including the added opponent-Bank of India, cannot be given in a Civil Application.

3. Hence, Civil application is dismissed.